

Part 1

General Procurement Provisions

63G-6a-101 Title.

- (1) This chapter is known as the "Utah Procurement Code."
- (2) This part is known as "General Procurement Provisions."

Renumbered and Amended by Chapter 347, 2012 General Session

63G-6a-102 Purpose of chapter.

The underlying purposes and policies of this chapter are:

- (1) to simplify, clarify, and modernize the law governing procurement in the state;
- (2) to ensure the fair and equitable treatment of all persons who deal with the procurement system;
- (3) to provide increased economy in state procurement activities; and
- (4) to foster effective broad-based competition within the free enterprise system.

Amended by Chapter 196, 2014 General Session

63G-6a-103 Definitions.

As used in this chapter:

- (1) "Administrative law judge" means the same as that term is defined in Section 67-19e-102.
- (2) "Administrative law judge service" means service provided by an administrative law judge.
- (3) "Applicable rulemaking authority" means:
 - (a) for a legislative procurement unit, the Legislative Management Committee;
 - (b) for a judicial procurement unit, the Judicial Council;
 - (c)
 - (i) only to the extent of the procurement authority expressly granted to the procurement unit by statute:
 - (A) for the building board or the Division of Facilities Construction and Management, created in Section 63A-5-201, the building board;
 - (B) for the Office of the Attorney General, the attorney general; and
 - (C) for the Department of Transportation created in Section 72-1-201, the executive director of the Department of Transportation; and
 - (ii) for each other executive branch procurement unit, the board;
 - (d) for a local government procurement unit:
 - (i) the legislative body of the local government procurement unit; or
 - (ii) an individual or body designated by the legislative body of the local government procurement unit;
 - (e) for a school district or a public school, the board, except to the extent of a school district's own nonadministrative rules that do not conflict with the provisions of this chapter;
 - (f) for a state institution of higher education, the State Board of Regents;
 - (g) for a public transit district, the chief executive of the public transit district;
 - (h) for a local district other than a public transit district or for a special service district:
 - (i) before January 1, 2015, the board of trustees of the local district or the governing body of the special service district; or
 - (ii) on or after January 1, 2015, the board, except to the extent that the board of trustees of the local district or the governing body of the special service district makes its own rules:

- (A) with respect to a subject addressed by board rules; or
 - (B) that are in addition to board rules; or
 - (i) for any other procurement unit, the board.
- (4) "Approved vendor" means a vendor who has been approved through the approved vendor list process.
- (5) "Approved vendor list" means a list of approved vendors established under Section 63G-6a-507.
- (6) "Approved vendor list process" means the procurement process described in Section 63G-6a-507.
- (7) "Bidder" means a person who submits a bid or price quote in response to an invitation for bids.
- (8) "Bidding process" means the procurement process described in Part 6, Bidding.
- (9) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.
- (10) "Building board" means the State Building Board, created in Section 63A-5-101.
- (11) "Change directive" means a written order signed by the procurement officer that directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.
- (12) "Change order" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.
- (13) "Chief procurement officer" means the chief procurement officer appointed under Subsection 63G-6a-302(1).
- (14) "Conducting procurement unit" means a procurement unit that conducts all aspects of a procurement:
- (a) except:
 - (i) reviewing a solicitation to verify that it is in proper form; and
 - (ii) causing the publication of a notice of a solicitation; and
 - (b) including:
 - (i) preparing any solicitation document;
 - (ii) appointing an evaluation committee;
 - (iii) conducting the evaluation process, except as provided in Subsection 63G-6a-707(6)(b) relating to scores calculated for costs of proposals;
 - (iv) selecting and recommending the person to be awarded a contract;
 - (v) negotiating the terms and conditions of a contract, subject to the issuing procurement unit's approval; and
 - (vi) contract administration.
- (15) "Conservation district" means the same as that term is defined in Section 17D-3-102.
- (16) "Construction":
- (a) means services, including work, and supplies for a project for the construction, renovation, alteration, improvement, or repair of a public facility on real property; and
 - (b) does not include services and supplies for the routine, day-to-day operation, repair, or maintenance of an existing public facility.
- (17) "Construction manager/general contractor":
- (a) means a contractor who enters into a contract:
 - (i) for the management of a construction project; and
 - (ii) that allows the contractor to subcontract for additional labor and materials that are not included in the contractor's cost proposal submitted at the time of the procurement of the contractor's services; and

- (b) does not include a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the procurement of the contractor's services is to meet subcontracted portions of change orders approved within the scope of the project.
- (18) "Contract" means an agreement for a procurement.
- (19) "Contract administration" means all functions, duties, and responsibilities associated with managing, overseeing, and carrying out a contract between a procurement unit and a contractor, including:
 - (a) implementing the contract;
 - (b) ensuring compliance with the contract terms and conditions by the conducting procurement unit and the contractor;
 - (c) executing change orders;
 - (d) processing contract amendments;
 - (e) resolving, to the extent practicable, contract disputes;
 - (f) curing contract errors and deficiencies;
 - (g) terminating a contract;
 - (h) measuring or evaluating completed work and contractor performance;
 - (i) computing payments under the contract; and
 - (j) closing out a contract.
- (20) "Contractor" means a person who is awarded a contract with a procurement unit.
- (21) "Cooperative procurement" means procurement conducted by, or on behalf of:
 - (a) more than one procurement unit; or
 - (b) a procurement unit and a cooperative purchasing organization.
- (22) "Cooperative purchasing organization" means an organization, association, or alliance of purchasers established to combine purchasing power in order to obtain the best value for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.
- (23) "Cost-plus-a-percentage-of-cost contract" means a contract under which the contractor is paid a percentage of the total actual expenses or costs in addition to the contractor's actual expenses or costs.
- (24) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.
- (25) "Days" means calendar days, unless expressly provided otherwise.
- (26) "Definite quantity contract" means a fixed price contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a specified schedule.
- (27) "Design-build" means the procurement of design professional services and construction by the use of a single contract.
- (28) "Design professional" means:
 - (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act; or
 - (b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.
- (29) "Design professional procurement process" means the procurement process described in Part 15, Design Professional Services.
- (30) "Design professional services" means:
 - (a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;
 - (b) professional engineering as defined in Section 58-22-102; or
 - (c) master planning and programming services.
- (31) "Director" means the director of the division.

- (32) "Division" means the Division of Purchasing and General Services, created in Section 63A-2-101.
- (33) "Educational procurement unit" means:
- (a) a school district;
 - (b) a public school, including a local school board and a charter school;
 - (c) the Utah Schools for the Deaf and Blind;
 - (d) the Utah Education and Telehealth Network; or
 - (e) an institution of higher education of the state.
- (34) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:
- (a) is regularly maintained by a manufacturer or contractor;
 - (b) is published or otherwise available for inspection by customers; and
 - (c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.
- (35) "Executive branch procurement unit" means a department, division, office, bureau, agency, or other organization within the state executive branch.
- (36) "Fixed price contract" means a contract that provides a price, for each procurement item obtained under the contract, that is not subject to adjustment except to the extent that:
- (a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or
 - (b) an adjustment is required by law.
- (37) "Fixed price contract with price adjustment" means a fixed price contract that provides for an upward or downward revision of price, precisely described in the contract, that:
- (a) is based on the consumer price index or another commercially acceptable index, source, or formula; and
 - (b) is not based on a percentage of the cost to the contractor.
- (38) "Grant" means an expenditure of public funds or other assistance, or an agreement to expend public funds or other assistance, for a public purpose authorized by law, without acquiring a procurement item in exchange.
- (39) "Head of a procurement unit" means:
- (a) for a legislative procurement unit, any person designated by rule made by the applicable rulemaking authority;
 - (b) for an executive branch procurement unit:
 - (i) the director of the division; or
 - (ii) any other person designated by the board, by rule;
 - (c) for a judicial procurement unit:
 - (i) the Judicial Council; or
 - (ii) any other person designated by the Judicial Council, by rule;
 - (d) for a local government procurement unit:
 - (i) the legislative body of the local government procurement unit; or
 - (ii) any other person designated by the local government procurement unit;
 - (e) for a local district other than a public transit district, the board of trustees of the local district or a designee of the board of trustees;
 - (f) for a special service district, the governing body of the special service district or a designee of the governing body;
 - (g) for a local building authority, the board of directors of the local building authority or a designee of the board of directors;

- (h) for a conservation district, the board of supervisors of the conservation district or a designee of the board of supervisors;
 - (i) for a public corporation, the board of directors of the public corporation or a designee of the board of directors;
 - (j) for a school district or any school or entity within a school district, the board of the school district, or the board's designee;
 - (k) for a charter school, the individual or body with executive authority over the charter school, or the individual's or body's designee;
 - (l) for an institution of higher education of the state, the president of the institution of higher education, or the president's designee; or
 - (m) for a public transit district, the board of trustees or a designee of the board of trustees.
- (40) "Immaterial error":
- (a) means an irregularity or abnormality that is:
 - (i) a matter of form that does not affect substance; or
 - (ii) an inconsequential variation from a requirement of a solicitation that has no, little, or a trivial effect on the procurement process and that is not prejudicial to other vendors; and
 - (b) includes:
 - (i) a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;
 - (ii) a typographical error;
 - (iii) an error resulting from an inaccuracy or omission in the solicitation; and
 - (iv) any other error that the chief procurement officer or the head of a procurement unit with independent procurement authority reasonably considers to be immaterial.
- (41) "Indefinite quantity contract" means a fixed price contract that:
- (a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit; and
 - (b)
 - (i) does not require a minimum purchase amount; or
 - (ii) provides a maximum purchase limit.
- (42) "Independent procurement authority" means authority granted to a procurement unit under Subsection 63G-6a-106(4)(a).
- (43) "Invitation for bids":
- (a) means a document used to solicit:
 - (i) bids to provide a procurement item to a procurement unit; or
 - (ii) quotes for a price of a procurement item to be provided to a procurement unit; and
 - (b) includes all documents attached to or incorporated by reference in a document described in Subsection (43)(a).
- (44) "Issuing procurement unit" means a procurement unit that:
- (a) reviews a solicitation to verify that it is in proper form;
 - (b) causes the notice of a solicitation to be published; and
 - (c) negotiates and approves the terms and conditions of a contract.
- (45) "Judicial procurement unit" means:
- (a) the Utah Supreme Court;
 - (b) the Utah Court of Appeals;
 - (c) the Judicial Council;
 - (d) a state judicial district; or
 - (e) an office, committee, subcommittee, or other organization within the state judicial branch.
- (46) "Labor hour contract" is a contract under which:

- (a) the supplies and materials are not provided by, or through, the contractor; and
 - (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit for a specified number of labor hours or days.
- (47) "Legislative procurement unit" means:
- (a) the Legislature;
 - (b) the Senate;
 - (c) the House of Representatives;
 - (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
 - (e) an office, committee, subcommittee, commission, or other organization within the state legislative branch.
- (48) "Local building authority" means the same as that term is defined in Section 17D-2-102.
- (49) "Local district" means the same as that term is defined in Section 17B-1-102.
- (50) "Local government procurement unit" means:
- (a) a county or municipality, and each office or agency of the county or municipality, unless the county or municipality adopts its own procurement code by ordinance;
 - (b) a county or municipality that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; or
 - (c) a county or municipality that has adopted a portion of this chapter by ordinance, to the extent that a term in the ordinance is used in the adopted portion of this chapter, and each office or agency of that county or municipality.
- (51) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one bidder or offeror.
- (52) "Multiyear contract" means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.
- (53) "Municipality" means a city, town, or metro township.
- (54) "Nonadopting local government procurement unit" means:
- (a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19, General Provisions Related to Protest or Appeal; and
 - (b) each office or agency of a county or municipality described in Subsection (54)(a).
- (55) "Offeror" means a person who submits a proposal in response to a request for proposals.
- (56) "Person" means the same as that term is defined in Section 68-3-12.5, excluding a political subdivision and a government office, department, division, bureau, or other body of government.
- (57) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.
- (58) "Procure" means to acquire a procurement item through a procurement.
- (59) "Procurement":
- (a) means a procurement unit's acquisition of a procurement item through an expenditure of public funds, or an agreement to expend public funds;
 - (b) includes all functions that pertain to the acquisition of a procurement item, including:
 - (i) preparing and issuing a solicitation; and
 - (ii)
 - (A) conducting a standard procurement process; or
 - (B) conducting a procurement process that is an exception to a standard procurement process under Part 8, Exceptions to Procurement Requirements; and
 - (c) does not include a grant.

(60) "Procurement item" means a supply, a service, or construction.

(61) "Procurement officer" means:

(a) for a procurement unit with independent procurement authority:

- (i) the head of the procurement unit;
- (ii) a designee of the head of the procurement unit; or
- (iii) a person designated by rule made by the applicable rulemaking authority; or

(b) for the division or a procurement unit without independent procurement authority, the chief procurement officer.

(62) "Procurement unit":

(a) means:

- (i) a legislative procurement unit;
- (ii) an executive branch procurement unit;
- (iii) a judicial procurement unit;
- (iv) an educational procurement unit;
- (v) a local government procurement unit;
- (vi) a local district;
- (vii) a special service district;
- (viii) a local building authority;
- (ix) a conservation district;
- (x) a public corporation; or
- (xi) a public transit district; and

(b) does not include a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

(63) "Professional service" means labor, effort, or work that requires an elevated degree of specialized knowledge and discretion, including labor, effort, or work in the field of:

- (a) accounting;
- (b) architecture;
- (c) construction design and management;
- (d) engineering;
- (e) financial services;
- (f) information technology;
- (g) the law;
- (h) medicine;
- (i) psychiatry; or
- (j) underwriting.

(64) "Protest officer" means:

(a) for the division or a procurement unit with independent procurement authority:

- (i) the head of the procurement unit;
- (ii) a designee of the head of the procurement unit; or
- (iii) a person designated by rule made by the applicable rulemaking authority; or

(b) for a procurement unit without independent procurement authority, the chief procurement officer or the chief procurement officer's designee.

(65) "Public corporation" means the same as that term is defined in Section 63E-1-102.

(66) "Public entity" means any government entity of the state or political subdivision of the state, including:

- (a) a procurement unit;
- (b) a municipality or county, regardless of whether the municipality or county has adopted this chapter or any part of this chapter; and

- (c) any other government entity located in the state that expends public funds.
- (67) "Public facility" means a building, structure, infrastructure, improvement, or other facility of a public entity.
- (68) "Public funds" means money, regardless of its source, including from the federal government, that is owned or held by a procurement unit.
- (69) "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.
- (70) "Qualified vendor" means a vendor who:
 - (a) is responsible; and
 - (b) submits a responsive statement of qualifications under Section 63G-6a-410 that meets the minimum mandatory requirements, evaluation criteria, and any applicable score thresholds set forth in the request for statement of qualifications.
- (71) "Real property" means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.
- (72) "Request for information" means a nonbinding process through which a procurement unit requests information relating to a procurement item.
- (73) "Request for proposals" means a document used to solicit proposals to provide a procurement item to a procurement unit, including all other documents that are attached to that document or incorporated in that document by reference.
- (74) "Request for proposals process" means the procurement process described in Part 7, Request for Proposals.
- (75) "Request for statement of qualifications" means a document used to solicit information about the qualifications of a person interested in responding to a potential procurement, including all other documents attached to that document or incorporated in that document by reference.
- (76) "Requirements contract" means a contract:
 - (a) under which a contractor agrees to provide a procurement unit's entire requirements for certain procurement items at prices specified in the contract during the contract period; and
 - (b) that:
 - (i) does not require a minimum purchase amount; or
 - (ii) provides a maximum purchase limit.
- (77) "Responsible" means being capable, in all respects, of:
 - (a) meeting all the requirements of a solicitation; and
 - (b) fully performing all the requirements of the contract resulting from the solicitation, including being financially solvent with sufficient financial resources to perform the contract.
- (78) "Responsive" means conforming in all material respects to the requirements of a solicitation.
- (79) "Sealed" means manually or electronically secured to prevent disclosure.
- (80) "Service":
 - (a) means labor, effort, or work to produce a result that is beneficial to a procurement unit;
 - (b) includes a professional service; and
 - (c) does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.
- (81) "Small purchase process" means the procurement process described in Section 63G-6a-506.
- (82) "Sole source contract" means a contract resulting from a sole source procurement.
- (83) "Sole source procurement" means a procurement without competition pursuant to a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the procurement item.
- (84) "Solicitation" means an invitation for bids, request for proposals, request for statement of qualifications, or request for information.

- (85) "Solicitation response" means:
- (a) a bid submitted in response to an invitation for bids;
 - (b) a proposal submitted in response to a request for proposals; or
 - (c) a statement of qualifications submitted in response to a request for statement of qualifications.
- (86) "Special service district" means the same as that term is defined in Section 17D-1-102.
- (87) "Specification" means any description of the physical or functional characteristics or of the nature of a procurement item included in an invitation for bids or a request for proposals, or otherwise specified or agreed to by a procurement unit, including a description of:
- (a) a requirement for inspecting or testing a procurement item; or
 - (b) preparing a procurement item for delivery.
- (88) "Standard procurement process" means:
- (a) the bidding process;
 - (b) the request for proposals process;
 - (c) the approved vendor list process;
 - (d) the small purchase process; or
 - (e) the design professional procurement process.
- (89) "State cooperative contract" means a contract awarded by the division for and in behalf of all public entities.
- (90) "Statement of qualifications" means a written statement submitted to a procurement unit in response to a request for statement of qualifications.
- (91) "Subcontractor":
- (a) means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction;
 - (b) includes a trade contractor or specialty contractor; and
 - (c) does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.
- (92) "Supply" means a good, material, technology, piece of equipment, or any other item of personal property.
- (93) "Tie bid" means that the lowest responsive bids of responsible bidders are identical in price.
- (94) "Time and materials contract" means a contract under which the contractor is paid:
- (a) the actual cost of direct labor at specified hourly rates;
 - (b) the actual cost of materials and equipment usage; and
 - (c) an additional amount, expressly described in the contract, to cover overhead and profit, that is not based on a percentage of the cost to the contractor.
- (95) "Transitional costs":
- (a) means the costs of changing:
 - (i) from an existing provider of a procurement item to another provider of that procurement item; or
 - (ii) from an existing type of procurement item to another type;
 - (b) includes:
 - (i) training costs;
 - (ii) conversion costs;
 - (iii) compatibility costs;
 - (iv) costs associated with system downtime;
 - (v) disruption of service costs;
 - (vi) staff time necessary to implement the change;
 - (vii) installation costs; and
 - (viii) ancillary software, hardware, equipment, or construction costs; and

- (c) does not include:
 - (i) the costs of preparing for or engaging in a procurement process; or
 - (ii) contract negotiation or drafting costs.
- (96) "Trial use contract" means a contract for a procurement item that the procurement unit acquires for a trial use or testing to determine whether the procurement item will benefit the procurement unit.
- (97) "Vendor":
 - (a) means a person who is seeking to enter into a contract with a procurement unit to provide a procurement item; and
 - (b) includes:
 - (i) a bidder;
 - (ii) an offeror;
 - (iii) an approved vendor; and
 - (iv) a design professional.

Amended by Chapter 176, 2016 General Session

Amended by Chapter 237, 2016 General Session

Amended by Chapter 355, 2016 General Session, (Coordination Clause)

Amended by Chapter 355, 2016 General Session

63G-6a-105 Application of chapter -- Ordinances or resolutions relating to procurement of design professional services -- Rules.

- (1) Except as provided in Section 63G-6a-107, this chapter applies to every procurement.
- (2) This chapter does not apply to a public entity that is not a procurement unit.
- (3) The following procurement units shall adopt ordinances or resolutions relating to the procurement of design professional services not inconsistent with the provisions of Part 15, Design Professional Services:
 - (a) an educational procurement unit;
 - (b) a conservation district;
 - (c) a local building authority;
 - (d) a local district;
 - (e) a public corporation; or
 - (f) a special service district.
- (4) Any section of this chapter, or its implementing regulations, may be adopted by:
 - (a) a county;
 - (b) a municipality; or
 - (c) the Utah Housing Corporation.
- (5) Rules adopted under this chapter shall be consistent with the provisions of this chapter.
- (6) An applicable rulemaking authority or a procurement unit may not adopt rules, policies, or regulations that are inconsistent with this chapter.
- (7) Unless otherwise provided by statute, this chapter does not apply to the acquisition or disposal of real property or an interest in real property.
- (8) Notwithstanding any provision of this chapter, a procurement unit may administer a procurement in accordance with the requirements imposed by the source of the funds used to procure the procurement item.

Amended by Chapter 355, 2016 General Session

63G-6a-106 Procurement units with specific statutory procurement authority -- Independent procurement authority -- Authority of head of a procurement unit with independent procurement authority.

- (1) A procurement unit with procurement authority under the following provisions has independent procurement authority to the extent of the applicable provisions and for the procurement items specified in the applicable provisions:
 - (a) Title 53B, State System of Higher Education;
 - (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management;
 - (c) Title 67, Chapter 5, Attorney General;
 - (d) Title 72, Transportation Code; and
 - (e) Title 78A, Chapter 5, District Court.
- (2) Except as otherwise provided in Sections 63G-6a-105 and 63G-6a-107, a procurement unit shall conduct a procurement in accordance with this chapter.
- (3)
 - (a) The Department of Transportation may make rules governing the procurement of highway construction or improvement.
 - (b) The applicable rulemaking authority for a public transit district may make rules governing the procurement of a transit construction project or a transit improvement project.
- (4)
 - (a) A procurement unit listed in Subsection (4)(b) may, without the supervision, interference, oversight, control, or involvement of the division or the chief procurement officer, but in accordance with the requirements of this chapter:
 - (i) engage in a standard procurement process;
 - (ii) procure an item under an exception, as provided in this chapter, to the requirement to use a standard procurement process; or
 - (iii) otherwise engage in an act authorized or required by this chapter.
 - (b) The procurement units to which Subsection (4)(a) applies are:
 - (i) a legislative procurement unit;
 - (ii) a judicial procurement unit;
 - (iii) an educational procurement unit;
 - (iv) a local government procurement unit;
 - (v) a conservation district;
 - (vi) a local building authority;
 - (vii) a local district;
 - (viii) a public corporation;
 - (ix) a special service district;
 - (x) a public transit district; and
 - (xi) a procurement unit referred to in Subsection (1), to the extent authorized in Subsection (1).
 - (c) A procurement unit with independent procurement authority shall comply with the requirements of this chapter.
 - (d) Notwithstanding Subsection (4)(a), a procurement unit with independent procurement authority may agree in writing with the division to extend the authority of the division or the chief procurement officer to the procurement unit, as provided in the agreement.
 - (e) With respect to a procurement or contract over which the head of a procurement unit with independent procurement authority has authority, the head of the procurement unit with independent procurement authority may:

- (i) manage and supervise the procurement to ensure to the extent practicable that taxpayers receive the best value;
- (ii) prepare and issue standard specifications for procurement items;
- (iii) review contracts, coordinate contract compliance, conduct contract audits, and approve change orders;
- (iv) delegate duties and authority to an employee of the procurement unit, as the head of the procurement unit with independent procurement authority considers appropriate;
- (v) for the head of an executive branch procurement unit with independent procurement authority, coordinate with the Department of Technology Services, created in Section 63F-1-103, with respect to the procurement unit's procurement of information technology services;
- (vi) correct, amend, or cancel a procurement at any stage of the procurement process if the procurement is out of compliance with this chapter or a rule adopted by the applicable rulemaking authority;
- (vii) after consultation with, as applicable, the attorney general's office or the procurement unit's legal counsel, correct, amend, or cancel a contract at any time during the term of the contract if:
 - (A) the contract is out of compliance with this chapter or a board rule; and
 - (B) the head of the procurement unit with independent procurement authority determines that correcting, amending, or canceling the contract is in the best interest of the procurement unit; and
- (viii) attempt to resolve a contract dispute in coordination with the legal counsel of the procurement unit with independent procurement authority.
- (f) The head of a procurement unit with independent procurement authority serves as the protest officer for a protest involving the procurement unit.
- (g) If, at any time during the term of a contract awarded by a procurement unit with independent procurement authority, the head of the procurement unit determines that the contract is out of compliance with this chapter or applicable rules, the head of the procurement unit may correct or amend the contract to bring it into compliance or cancel the contract:
 - (i) if the head of the procurement unit determines that correcting, amending, or canceling the contract is in the best interest of the procurement unit; and
 - (ii) after consulting with legal counsel.
- (5)
 - (a) The attorney general may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer:
 - (i) retain outside counsel, subject to Section 67-5-33 if the attorney general retains outside counsel under a contingent fee contract, as defined in that section; or
 - (ii) procure litigation support services, including retaining an expert witness.
 - (b) A procurement unit with independent procurement authority that is not represented by the attorney general's office may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer:
 - (i) retain outside counsel; or
 - (ii) procure litigation support services, including retaining an expert witness.
- (6) The state auditor's office may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer, procure audit services.
- (7) The state treasurer may, in accordance with the provisions of this chapter, but without involvement by the division or the chief procurement officer, procure:
 - (a) deposit services; and

- (b) services related to issuing bonds.

Amended by Chapter 355, 2016 General Session

63G-6a-106.5 Policy for legislative procurement units.

The Legislative Management Committee shall adopt a policy establishing requirements applicable to a legislative procurement unit.

Enacted by Chapter 355, 2016 General Session

63G-6a-107 Exemptions from chapter -- Compliance with other provisions.

- (1) Except for Part 24, Unlawful Conduct and Penalties, this chapter does not apply to:
 - (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art Act;
 - (b) a grant;
 - (c) a contract between procurement units;
 - (d) medical supplies or medical equipment, including service agreements for medical equipment, obtained by the University of Utah Hospital through a purchasing consortium if:
 - (i) the consortium uses a competitive procurement process; and
 - (ii) the chief administrative officer of the hospital makes a written finding that the prices for purchasing medical supplies and medical equipment through the consortium are competitive with market prices;
 - (e) the purchase of firefighting supplies or equipment by the Division of Forestry, Fire, and State Lands, created in Section 65A-1-4, through the federal General Services Administration or the National Fire Cache system;
 - (f) supplies purchased for resale to the public; or
 - (g) activities related to the management of investments by a public entity granted investment authority by law.
- (2) Notwithstanding any conflicting provision of this chapter, if a procurement involves the expenditure of federal or state assistance, federal contract funds, local matching funds, or federal financial participation funds, the procurement unit shall comply with mandatory applicable federal or state law and regulations not reflected in this chapter.
- (3) This chapter does not supersede the requirements for retention or withholding of construction proceeds and release of construction proceeds as provided in Section 13-8-5.
- (4) This chapter does not apply to a procurement unit's hiring a mediator, arbitrator, or arbitration panel member to participate in the procurement unit's dispute resolution efforts.

Amended by Chapter 355, 2016 General Session

63G-6a-108 Limitations on and responsibility of executive branch procurement units.

- (1) An executive branch procurement unit may not engage in a procurement unless:
 - (a) the procurement is made under the direction and control of the division; or
 - (b) the procurement is made under Section 63G-6a-106.
- (2) An executive branch procurement unit that conducts any part of a procurement under this chapter is responsible to conduct that part of the procurement in compliance with this chapter.

Amended by Chapter 196, 2014 General Session

63G-6a-109 Issuing procurement unit and conducting procurement unit.

- (1) With respect to a procurement by an executive branch procurement unit:
 - (a) the division is the issuing procurement unit; and
 - (b) the executive branch procurement unit is the conducting procurement unit and is responsible to ensure that the procurement is conducted in compliance with this chapter.
- (2) With respect to a procurement by any other procurement unit, the procurement unit is both the issuing procurement unit and the conducting procurement unit.
- (3) A conducting procurement unit is responsible for contract administration.

Amended by Chapter 355, 2016 General Session

63G-6a-110 Procurement unit required to comply with Utah Procurement Code and applicable rules -- Rulemaking authority -- Reporting.

- (1) Except as otherwise provided in Section 63G-6a-107, a procurement unit may not obtain a procurement item, unless:
 - (a) if the procurement unit is the division or a procurement unit with independent procurement authority, the procurement unit:
 - (i) uses:
 - (A) a standard procurement process; or
 - (B) an exception to a standard procurement process, described in Part 8, Exceptions to Procurement Requirements; and
 - (ii) complies with:
 - (A) the requirements of this chapter; and
 - (B) the rules made pursuant to this chapter by the applicable rulemaking authority;
 - (b) if the procurement unit is a county, a municipality, or the Utah Housing Corporation, the procurement unit complies with:
 - (i) the requirements of this chapter that are adopted by the procurement unit; and
 - (ii) all other procurement requirements that the procurement unit is required to comply with; or
 - (c) if the procurement unit is not a procurement unit described in Subsection (1)(a) or (b), the procurement unit:
 - (i) obtains the procurement item under the direction and approval of the division, unless otherwise provided by a rule made by the board;
 - (ii) uses a standard procurement process; and
 - (iii) complies with:
 - (A) the requirements of this chapter; and
 - (B) the rules made pursuant to this chapter by the applicable rulemaking authority.
- (2) Subject to Subsection (3), the applicable rulemaking authority shall make rules relating to the management and control of procurements and procurement procedures by a procurement unit.
- (3) Building board rules governing procurement of construction, design professional services, and leases apply to the procurement of construction, design professional services, and leases of real property by the Division of Facilities Construction and Management.
- (4) An individual or body that makes rules as required or authorized in this chapter shall make the rules:
 - (a) in accordance with Chapter 3, Utah Administrative Rulemaking Act, if the individual or body is subject to Chapter 3, Utah Administrative Rulemaking Act; or
 - (b) in accordance with the established process for making rules or their equivalent, if the individual or body is not subject to Chapter 3, Utah Administrative Rulemaking Act.
- (5) The building board shall make a report on or before July 1 of each year to a legislative interim committee, designated by the Legislative Management Committee created under Section

36-12-6, on the establishment, implementation, and enforcement of the rules made by the building board under this chapter.

- (6) The rules of the applicable rulemaking authority for the executive branch procurement unit shall require, for each contract and request for proposals, the inclusion of a clause that requires the issuing procurement unit, for the duration of the contract, to make available contact information of the winning contractor to the Department of Workforce Services in accordance with Section 35A-2-203. This requirement does not preclude a contractor from advertising job openings in other forums throughout the state.

Renumbered and Amended by Chapter 355, 2016 General Session

63G-6a-111 Purpose of specifications.

- (1) All specifications shall seek to promote the overall economy and best use for the purposes intended and encourage competition in satisfying the needs of the procurement unit, and may not be unduly restrictive.
- (2) The requirements of this part regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including those prepared by architects, engineers, designers, and draftsmen for public contracts.

Renumbered and Amended by Chapter 355, 2016 General Session

63G-6a-112 Required public notice.

- (1) The division or a procurement unit with independent procurement authority that issues a solicitation required to be published in accordance with this section, shall provide public notice that includes:
 - (a) the name of the conducting procurement unit;
 - (b) the name of the procurement unit acquiring the procurement item;
 - (c) information on how to contact the issuing procurement unit;
 - (d) the date of the opening and closing of the solicitation;
 - (e) information on how to obtain a copy of the procurement documents;
 - (f) a general description of the procurement items that will be obtained through the standard procurement process or procurement under Section 63G-6a-802; and
 - (g) for a notice of a procurement under Section 63G-6a-802:
 - (i) contact information and other information relating to contesting or obtaining additional information relating to the procurement; and
 - (ii) the earliest date that the procurement unit may make the procurement.
- (2) Except as provided in Subsection (4), the issuing procurement unit shall publish the notice described in Subsection (1):
 - (a) at least seven days before the day of the deadline for submission of a bid or other response; and
 - (b)
 - (i) in a newspaper of general circulation in the state;
 - (ii) in a newspaper of local circulation in the area:
 - (A) directly impacted by the procurement; or
 - (B) over which the procurement unit has jurisdiction;
 - (iii) on the main website for the issuing procurement unit or the procurement unit acquiring the procurement item; or

- (iv) on a state website that is owned, managed by, or provided under contract with, the division for posting a public procurement notice.
- (3) Except as provided in Subsection (4), for a procurement under Section 63G-6a-802 for which notice is required to be published in accordance with this section, the issuing procurement unit shall publish the notice described in Subsection (1):
 - (a) at least seven days before the acquisition of the procurement item; and
 - (b)
 - (i) in a newspaper of general circulation in the state;
 - (ii) in a newspaper of local circulation in the area:
 - (A) directly impacted by the procurement; or
 - (B) over which the procurement unit has jurisdiction;
 - (iii) on the main website for the procurement unit acquiring the procurement item; or
 - (iv) on a state website that is owned by, managed by, or provided under contract with, the division for posting a procurement notice.
- (4) An issuing procurement unit may reduce the seven-day period described in Subsection (2) or (3), if the procurement officer or the procurement officer's designee signs a written statement that:
 - (a) states that a shorter time is needed; and
 - (b) determines that competition from multiple sources may be obtained within the shorter period of time.
- (5)
 - (a) An issuing procurement unit shall make a copy of the solicitation documents available for public inspection at the main office of the issuing procurement unit or on the website described in Subsection (2)(b) until the award of the contract or the cancellation of the procurement.
 - (b) A procurement unit issuing a procurement under Section 63G-6a-802 shall make a copy of information related to the procurement available for public inspection at the main office of the procurement unit or on the website described in Subsection (3)(b) until the award of the contract or the cancellation of the procurement.
 - (c) A procurement unit shall maintain all records in accordance with Part 20, Records.
- (6) A procurement unit that issues a request for statement of qualifications as part of an approved vendor list process that results in the establishment of an open-ended vendor list, as defined in Section 63G-6a-507, shall keep the request for statement of qualifications posted on a website described in Subsection (2)(b)(iii) or (iv) during the entire period of the open-ended vendor list.

Renumbered and Amended by Chapter 355, 2016 General Session

63G-6a-113 Price based on established terms.

A procurement unit acquiring a procurement item may establish the price of the procurement item based on:

- (1) a price list, rate schedule, or price catalog:
 - (a) submitted by a vendor and accepted by the procurement unit; or
 - (b) mandated by the procurement unit or a federal agency; or
- (2) a federal regulation for a health and human services program.

Enacted by Chapter 355, 2016 General Session

63G-6a-114 Correcting an immaterial error in a solicitation response.

- (1) The chief procurement officer or the head of a procurement unit with independent procurement authority:
 - (a) may allow a vendor to correct an immaterial error in a responsive solicitation response as provided in this section; and
 - (b) may not allow a vendor to:
 - (i) correct a deficiency, inaccuracy, or mistake in a responsive solicitation response that is not an immaterial error;
 - (ii) correct an incomplete submission of documents that the solicitation required to be submitted with the solicitation response;
 - (iii) correct a failure to submit a timely solicitation response;
 - (iv) substitute or alter a required form or other document specified in the solicitation;
 - (v) remedy a cause for a vendor being considered to be not responsible or a solicitation response not responsive; or
 - (vi) correct a defect or inadequacy resulting in a determination that a vendor's solicitation response does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.
- (2)
 - (a) The chief procurement officer or the head of a procurement unit with independent procurement authority shall establish a deadline by which a vendor is required to submit a correction under this section.
 - (b) The chief procurement officer or the head of a procurement unit with independent procurement authority may not allow a vendor to correct an immaterial error in a solicitation response if the vendor submits the correction after the deadline established under Subsection (2)(a).
- (3) If the chief procurement officer or the head of a procurement unit with independent procurement authority allows a vendor to correct an immaterial error in a solicitation response, the chief procurement officer or head shall prepare and sign a written document supporting the reason for allowing the correction.

Enacted by Chapter 355, 2016 General Session

63G-6a-115 Clarifying information in a solicitation response.

- (1) A procurement unit may at any time make a written request to a vendor to clarify information contained in a responsive solicitation response.
- (2) A procurement unit may allow a vendor to respond to a request under Subsection (1):
 - (a) in writing; or
 - (b) by submitting a printed document.
- (3)
 - (a) A procurement unit that requests a vendor to clarify information contained in a responsive solicitation response under this section shall establish a deadline by which the vendor is required to submit the clarifying information.
 - (b) A procurement unit may not allow a vendor to submit clarifying information after the deadline established under Subsection (3)(a).
- (4) A vendor's response to a request under this section:
 - (a) may only explain, illustrate, or interpret the contents of the vendor's original solicitation response;
 - (b) may not be used to address criteria or specifications not contained in the vendor's original solicitation response; and

- (c) may not be used to:
 - (i) correct a deficiency, inaccuracy, or mistake in a solicitation response that is not an immaterial error;
 - (ii) correct an incomplete submission of documents that the solicitation required to be submitted with the solicitation response;
 - (iii) correct a failure to submit a timely solicitation response;
 - (iv) substitute or alter a required form or other document specified in the solicitation;
 - (v) remedy a cause for a vendor being considered to be not responsible or a solicitation response not responsive; or
 - (vi) correct a defect or inadequacy resulting in a determination that a vendor does not meet the mandatory minimum requirements, evaluation criteria, or applicable score thresholds established in the solicitation.

Enacted by Chapter 355, 2016 General Session

63G-6a-116 Procurement of administrative law judge service.

- (1) A procurement unit shall use a standard procurement process under this chapter for the procurement of administrative law judge service.
- (2) Within 30 days after the day on which a conducting procurement unit awards a contract for administrative law judge service, the conducting procurement unit shall give written notice to the Department of Human Resource Management that states:
 - (a) that the conducting procurement unit awarded a contract for administrative law judge service;
 - (b) the name of the conducting procurement unit; and
 - (c) the expected term of the contract.

Enacted by Chapter 355, 2016 General Session

Amended by Chapter 355, 2016 General Session, (Coordination Clause)

63G-6a-117 Sale of previously purchased procurement item -- Limitations.

- (1) As used in this section:
 - (a) "Buyback purchaser" means a person who buys a procurement item from the procurement unit to which the person previously sold the procurement item.
 - (b) "Excess repurchase amount" means the difference between:
 - (i) the amount a buyback purchaser pays to a procurement unit to purchase a procurement item that the buyback purchaser previously sold to the procurement unit; and
 - (ii) the amount the procurement unit paid to the buyback purchaser to purchase the procurement item.
- (2) A procurement unit that sells a procurement item to a buyback purchaser for an amount that exceeds the amount the procurement unit paid for the procurement item:
 - (a) shall require the buyback purchaser to pay cash for the procurement item;
 - (b) may not accept the excess repurchase amount in the form of a credit, discount, or other incentive on a future purchase that the procurement unit makes from the buyback purchaser; and
 - (c) may not use the excess repurchase amount to acquire an additional procurement item from the person who paid the excess repurchase amount.

Enacted by Chapter 180, 2016 General Session

